

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MALIBU MEDIA, LLC,

Plaintiff,

vs.

JOHN DOE,

Defendant.

CIVIL ACTION NO. 5-19-CV-00834-DAE

DECLARATION OF JT MORRIS

I, JT Morris, declare pursuant to 28 U.S.C. § 1746 that the following statements are true and correct based on my personal knowledge:

1. I am over the age of 18, I have never been convicted of a felony, and I am of sound mind.
2. I am lead counsel for Defendant John Doe. The sole purpose of this declaration is to submit documentary evidence and evidence of attorney's fees in support of Doe's motion for sanctions.
3. Attached as Exhibit A is an email chain between counsel.
4. Attached as Exhibit B is a document titled "Plaintiff's Privilege Log" that Malibu served on December 21, 2020.
5. Doe has engaged our services on an hourly basis. My hourly rate for this case is \$300.00 per hour. Ramzi Khazen's rate is \$250.00 per hour. These reflect our general rates for litigation.
6. Both Mr. Khazen and I have over a decade of experience litigating intellectual property cases. Based on my experience and knowledge, our rates are comparable with similar rates in this District for attorneys of our experience and firms of our size.

7. I have reviewed our billing records for this case, which are kept contemporaneously with the work performed and in the usual course of business.
8. Mr. Khazen spent 21.3 hours working on Doe's motion to compel. This included research, drafting the motion, drafting the reply, preparing for and attending the conference required under the Court's July 29, 2020 order, drafting Doe's portions of the parties' joint advisory also required under that order, and preparing for and attending the hearing on Doe's motion. This resulted in attorney's fees of \$5,325.00
9. Mr. Khazen also spent 4.7 working on Doe's motion for sanctions. This included reviewing and analyzing the record and drafting the motion. This resulted in attorney's fees of \$1,175.00.
10. I spent 4.9 hours on Doe's motion for sanctions. This included research, drafting and revising the motion, and drafting this declaration. This resulted in attorney's fees of \$1,470.00, for a total of \$2,645.00 in attorney's fees on Doe's motion for sanctions.

I declare under the penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on January 14, 2021



JT Morris

From: [JT Morris](#)
To: [paul.beiklaw.com](#); [Ramzi Khazen](#)
Subject: RE: Malibu Media v. Doe
Date: Wednesday, December 16, 2020 8:08:00 PM

Paul,

1. I have to receive an answer to my question about what specifically Malibu produced that Lomnitzer was holding. Malibu made a number of representations to both us and the Court about the documents Lomnitzer was holding. We're entitled to some clarity on this.
2. To that end, we also have not received communications with IPP, including those over What's App and similar platforms that Ms. Pelisser testified about. Please advise.
3. We still have no privilege log, despite Malibu stating to the Court in August that it would provide one. Please provide one immediately, or explain Malibu's delay.
4. Finally, in the parties' joint statement to the Court on the motion to compel, Malibu stated it was not in possession, custody, or control of work for hire contracts. Yet Ms. Pelisser's testimony suggests this is not the case [E.g., Tr. 143:11]. Please clarify.

We would appreciate a response to all four issues by no later than Monday, December 21.

Best,
JT

JT Morris
JT Morris Law, PLLC
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Fax: (512) 582-2948
jt@jtmorrislaw.com
[Bio](#)

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From: JT Morris
Sent: Monday, December 7, 2020 7:16 PM
To: paul.beiklaw.com <paul@beiklaw.com>; Ramzi Khazen <ramzi@jtmorrislaw.com>
Subject: RE: Malibu Media v. Doe

Paul,

Thanks. I'll have a link to Logickull re-sent to you shortly. They expire after 7 days.

Regarding the Lomintzer documents, what specifically was produced that they had? We are a bit confused, because in the time between Malibu's first production and now, Malibu was still representing that Lomnitzer was withholding documents. It seems (and we could be wrong), that Lomintzer would have more, such as documents regarding the alleged infringement.

Please see the attached for Malibu's representation to the Court that it would provide a privilege log. And in any event, Malibu is obligated under Rule 26(b)(5) to describe all relevant information it is withholding under claims of privilege or work product. Please serve Malibu's privilege log within 7 days. The delay has already been too long and prejudicial.

Also, please confirm Malibu's position on our upcoming motion to de-designate Ms. Pelisser's deposition transcript (I provided details in an email Friday).

Best,
JT

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JT Morris Law, PLLC
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From: paul beiklaw.com <paul@beiklaw.com>

Sent: Monday, December 7, 2020 6:50 PM

To: JT Morris <jt@jtmorrislaw.com>; Ramzi Khazen <ramzi@jtmorrislaw.com>

Subject: Re: Malibu Media v. Doe

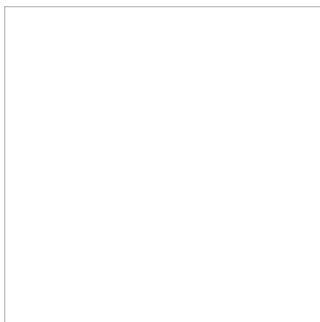
JT,

yes, the spreadsheet with the additional works (non-Malibu) which my client alleges were downloaded by Defendant was added along with the other documents identified and sent in the email below. As requested, here is the link:

<https://www.dropbox.com/sh/gpsmdds9qsfx5iz/AAB9Wj0axdZcGYKZBvpcdWOpa?dl=0>

[REVISED WTX40 Final Production -
Batestamp](#)

Shared with Dropbox



www.dropbox.com

Could you please ask Logikcull to unlock Defendant's two document production sets? It stated that you had to unlock them so they can be accessed again.

All of the documents from Lomnizer were previously produced. I forwarded your question regarding the platforms searched to my client and will follow up. Yes, my client can provide a privilege log if you would like one - I didn't recall you sending that request.

Paul S. Beik

Beik Law Firm, PLLC

8100 Washington Avenue, Suite 1000

Houston, Texas 77007

Tel: (713) 869-6975

Fax: (713) 868-2262

paul@beiklaw.com

From: JT Morris <jt@jtmorrislaw.com>

Sent: Thursday, December 3, 2020 12:13 PM

To: paul beiklaw.com <paul@beiklaw.com>; Ramzi Khazen <ramzi@jtmorrislaw.com>

Subject: RE: Malibu Media v. Doe

Paul,

We will review the confidentiality log, although given it's length, I suspect we will have to seek the Court's intervention very soon with the summary judgment deadline approaching.

For the documents:

1. Have you added more documents to the Dropbox since the time you first sent the link? Can

you please re-send the Dropbox link?

2. Can you specify what documents Malibu has produced that were in Lomnitzer's possession until recently?
3. Please confirm that Ms. Pelissier checked all electronic platforms and logs for communications with IPP. If she was unable to locate any despite testifying to their existence, can we assume that Malibu did not preserve these?
4. Also, when will Malibu provide a privilege log? It represented in the parties' joint advisory on the motion to compel that it would provide one.

Please respond no later than COB tomorrow.

Thanks,
JT

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[Bio](#)

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From: paul beiklaw.com <paul@beiklaw.com>
Sent: Thursday, December 3, 2020 11:47 AM
To: Ramzi Khazen <ramzi@jtmorrislaw.com>
Cc: JT Morris <jt@jtmorrislaw.com>
Subject: Re: Malibu Media v. Doe

Hi Ramzi,

Thank you for following up. Attached please find a confidentiality log for Ms. Pelissier's deposition and it de-designates as indicated and pursuant to the protective order. I presented your email to my client to search for the requested items referenced. Attached is the spreadsheet which includes the additional evidence of the works (non-Malibu works) that were downloaded (this was added to the dropbox provided previously but I attach it as well). Also attached is a deposition transcript from June 14, 2019 deposition. A cease and desist letter and revocation of a power of attorney is also attached. Analytics information is also attached. Ms. Pelissier could not locate any written communications with IPP. She also could not locate any subsequent agreements with IPP other than the one previously produced. All non-privileged and/or attorney work product documents received from the Lomnitzer law firm

have been produced.

Paul S. Beik

Beik Law Firm, PLLC

8100 Washington Avenue, Suite 1000

Houston, Texas 77007

Tel: (713) 869-6975

Fax: (713) 868-2262

paul@beiklaw.com

From: Ramzi Khazen <ramzi@jtmorrislaw.com>

Sent: Wednesday, December 2, 2020 6:48 PM

To: paul beiklaw.com <paul@beiklaw.com>

Cc: JT Morris <jt@jtmorrislaw.com>

Subject: Re: Malibu Media v. Doe

Paul, please advise regarding my email below. If Malibu fails to de-designate promptly, Doe will have no choice but to move the court as provided in the protective order.

Regards. Ramzi

Get [Outlook for iOS](#)

From: Ramzi Khazen

Sent: Tuesday, November 17, 2020 12:22:31 PM

To: paul beiklaw.com <paul@beiklaw.com>

Cc: JT Morris <jt@jtmorrislaw.com>

Subject: Malibu Media v. Doe

Paul, Please redesignate Ms. Pelissier's deposition to the appropriate confidentiality levels. Most of the deposition did not contain Malibu's confidential information and should promptly be de-designated.

Ms. Pelissier referenced numerous categories of documents in her deposition that should have been produced. For example:

- The supposed “additional evidence” Ms. Pelisser repeatedly referenced, in its complete and raw form, which she claimed was from “one of our consultants” and contained “exact geolocation” information as well as over 30000 “additional hits” that Ms. Pelissier claimed she had seen in a spreadsheet.
- Ms. Pelissier testified that within the last year and beyond she had communicated with IPP and Computer Forensics via apps such as whatsapp, skype, and the like. These communications were promised multiple times and have not been produced.
- The spreadsheet showing paid users referenced on page 152, as well as the tax information referenced showing the revenues and profitability (if any) of the X-Art site. She specifically testified that she did not search for income related documents but that information could be obtained through her taxes (see, e.g., p. 224)
- Ms. Pelissier’s recent deposition in another copyright case.
- The subsequent IPP agreements that came after the one that was produced.
- The documents from the Genova/warmblood case regarding allegations involving ownership of the copyrights at issue in this suit. Malibu had denied that such a case even existed until Ms. Pelissier testified to it having been initiated eight months ago. Please also produce the power of attorney signed over to Genova and/or warmblood as well as any revocation.
- Data regarding the alleged IP theft discussed at p. 260.
- The remaining documents from Lomnitzer Law Firm

Regards, Ramzi

RAMZI KHAZEN
JT MORRIS LAW, PLLC
1105 Nueces St., Suite B
Austin, TX 78701
P: 512.789.6140

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**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MALIBU MEDIA, LLC,)	
)	
Plaintiff,)	Civil Action Case No. 5:19-cv-00834-DAE
)	
)	
v.)	
)	
JOHN DOE,)	
)	
Defendant.)	
_____)	

PLAINTIFF'S PRIVILEGE LOG

Plaintiff, Malibu Media, LLC, files its privilege log regarding documents requested by Defendant.

Document Description	Privilege Asserted
Electronic correspondence prepared by former counsel, Lomnitzer Law, to Ms. Pelissier regarding initiation of suit.	Work Product & Attorney-Client
Electronic correspondence prepared by former counsel, Lomnitzer Law, to Malibu Media paralegals and support staff regarding initiation of suit.	Work Product
Electronic correspondence from Malibu Media paralegal to local counsel regarding initiation of suit.	Work Product
Electronic correspondence with Beik Law Firm regarding initiation of lawsuit	
Correspondence between Ms. Pelissier and California counsel regarding Genova and Warmblood lawsuits	Attorney-Client

Dated: December 21, 2020

Respectfully submitted,

By: /s/ Paul S. Beik
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ATTORNEY FOR PLAINTIFF